No. 08-263

Supreme Court, U.S.
FILED
FEB 2 - 2009
OFFICE OF THE CLERK

In The Supreme Court of the United States

JOHN ALVIS JACKSON, JR.
and
LARRY ANDREW CAREY,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

REPLY BRIEF OF THE PETITIONERS

Anthony F. Anderson
Melissa W. Friedman
Anderson & Friedman
Post Office Box 1525
Roanoke, VA 24007
(540) 982-1525
Counsel for
John Alvis Jackson, Jr.

Joseph A. Sanzone
Sanzone & Baker, P.C.
Post Office Box 1978
Lynchburg, VA 24505
(434) 846-4691
Counsel for
Larry Andrew Carey

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTION PRESENTED

WHETHER AN UNPAID EMPLOYER CONTRIBUTION TO A COMPANY'S EMPLOYEE BENEFIT PLAN, SUCH AS A PENSION OR RETIREMENT PLAN, BECOMES AN ASSET OF THE PLAN BEFORE IT IS PAID INTO THE PLAN SUCH THAT AN OFFICER OF SUCH COMPANY CAN BE CONVICTED OF EMBEZZLING FROM THE PLAN WHEN THE COMPANY FAILS TO TIMELY FUND THE PLAN?

TABLE OF CONTENTS

Question Presented i

Table of Contents ii

Argument 1

Conclusion 2

IN THE SUPREME COURT OF THE UNITED STATES

No. 08-263

JOHN ALVIS JACKSON, JR. AND
LARRY ANDREW CAREY,
PETITIONERS,

V.

UNITED STATES OF AMERICA,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

REPLY BRIEF OF THE PETITIONERS

In its Response Brief, the United States agrees with the Petitioners that unpaid employer contributions to an ERISA plan are not assets of that plan absent a contractual provision to that effect and that therefore the Petitioners cannot be guilty of embezzling plans' assets by failing to timely fund The Burruss Company's retirement plans. The United States concludes that "the petition for writ of certiorari should be granted, the judgment of the Court of Appeals should be vacated, and the case should be remanded for further proceedings ...". Br. Resp. 25. The Respondent states that "the government failed to prove that petitioners converted ERISA plan assets in violation of Section 664" as alleged in Counts 11 and 12 of the Indictment. Br.

Resp. 24. Thus, the Petitioners' convictions for these Counts must be reversed.

Therefore, for the reasons stated in their Petition for Writ of Certiorari, the Petitioners join the United States' request to grant their petition, to vacate the decision of the Forth Circuit Court of Appeals, and to remand for further proceedings.

CONCLUSION

For the reasons set forth in their Petition for Writ of Certiorari, Petitioners request that this Petition for Writ of Certiorari be granted, that the judgment of the Fourth Circuit Court of Appeals be reversed with directions that the cases be remanded to the United States District Court for entry of judgment of acquittal as to Counts Eleven and Twelve as well as a re-sentencing of the Defendants because acquittal on these counts will affect the United States Sentencing Guidelines calculations.

Respectfully submitted,
JOHN ALVIS JACKSON, JR.

Anthony F. Anderson
Melissa W. Friedman
Anderson & Friedman
P. O. Box 1525
Roanoke, Virginia 24007
(540) 982-1525
Counsel for Appellant, John Alvis Jackson, Jr.

Respectfully submitted,
LARRY ANDREW CAREY

Joseph A. Sanzone
Sanzone & Baker
P.O. Box 1078
Lynchburg, Virginia 24505
(434) 846-4691
Counsel for Appellant, Larry Andrew Carey